

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

No. 5:10-CR-240-FL-1

No. 5:12-CV-218-FL

ROSELIO GARCIA-AGUILERA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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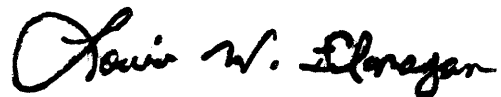
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ORDER

This matter is before the court on the Memorandum and Recommendation (“M&R”) of United States Magistrate Judge James E. Gates, regarding the petitioner’s motion to vacate, set aside, or correct his sentence, under 28 U.S.C. § 2255 (DE 33), the government’s motion to dismiss (DE 36), petitioner’s motion to construe his petition as one under 28 U.S.C. § 2241 (DE 39), and motion for an order confirming his petition will not be counted as a first § 2255 petition (DE 40). No objections to the M&R have been filed, and the time within which to make any objection has expired. This matter is ripe for ruling.

Upon careful review of the M&R and of the record generally, having found no clear error, the court hereby ADOPTS the recommendation of the magistrate judge as its own, and, for the reasons stated therein, the government’s motion is GRANTED, petitioner’s motions are DENIED, and this matter is DISMISSED. Under 28 U.S.C. § 2253(c), the court has reviewed the arguments raised, and, in light of the applicable standard, a certificate of appealability is DENIED. The clerk of court is directed to close the case.

SO ORDERED this the 6th day of June, 2014.



LOUISE W. FLANAGAN  
United States District Judge